IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4295 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BABUBHAI VALDAS

Versus

G.S.R.T.C.

Appearance:

1. Special Civil Application No. 4295 of 1995

MR AKIL KURESHI for Petitioner No. 1

MR YOGESH S LAKHANI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 05/04/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Akil Qureshi for the petitioner and Mr. Y.S. Lakhani for the respondent Corporation. The petitioner workman has challenged the award made by the labour court concerned in Reference NO.

165 of 1987 new number 820 of 1990 dated 17th February, 1993 wherein the labour court has set aside the order of dismissal dated 16th June, 1986 and granted reinstatement with continuity of service but without back wages for the intervening period. The petitioner has challenged the award of labour court in so far as it relates to denial of back wages for the intervening period.

2. Learned advocate Mr. Qureshi appearing for the petitioner has submitted that the petitioner was working for more than twenty years as a driver and he remained absent and, therefore, he was served with a charge sheet and after completion of the departmental inquiry, he was dismissed from service on 16th June, 1986. He has submitted that for remaining absent for a period of four days cannot be considered to be a serious misconduct in view of the decision given by the apex court reported in AIR 1994 SC 215; 1999 SCC Labour & Service 666. He has also relied upon the decision of this Court in case of Vijay M. Jasani versus GSRTC reported in 1987 Labour and Industrial Cases 685 and the decision in case of GSRTC versus Rama Samant Godhania reportedin 2000 (2) GLH 231 and has submitted that as per the decisions of the apex court as well as this Court, 2 or 4 days absence cannot be considered to be a serious misconduct and in view of such a legal position, action of dismissal has rightly been held to be unjustified and apex court as well as this court has granted reinstatement with full back wages with some minor punishment and in one case, in a similar situation, while granting reinstatement, 50 per cent of the back wages has been granted and, therefore, he has submitted that the case of the petitioner ought to have been considered by the labour court on that line and the labour court ought to have granted full back wages. He further submitted that the workman has deposed before the labour court at Exh. 21 that he remained unemployed and with the help of the others, he was maintaining the family and the evidence as regards unemployment during the intervening period has not been rebutted by the corporation by producing any evidence as regards gainful employment and, therefore, the labour court was not justified in denying the back wages for the intervening period. He has further submitted that for a punishment of remaining absent for a period of four days, denial of back wages for intervening period from 16th June, 1986 to 17th February, 1993 comes to about more than seven years and denial of back wages for such a long period cannot be considered to be proper punishment, if at all, imposed by the labour court and such penalty itself is unreasonable, arbitrary, unwarranted and, therefore, interference of this court is necessary.

On the other hand, learned advocate Mr. Lakhani appearing for the corporation has submitted that the misconduct of remaining absent for a period of four days was proved in the departmental inquiry and ultimately the workman was dismissed from service after considering his past record. His past record was bad and once he was dismissed by the Corporation. He has submitted that the labour court is having discretionary powers under section 11-A of the Industrial Disputes Act, 1947 and in exercise of such discretion, the labour court has found it proper to grant reinstatement in favour of the respondent workman without back wages for the intervening period and therefore this Court should not interfere with the award in question. He has further submitted that the petitioner has not been able to point out that the labour court has erred in denying the back wages in exercise of such powers and, therefore also this court should not interfere with the award in question.

I have considered the submissions made by the learned advocates for the parties.I have also perused the award in question. Order of dismissal is produced by the petitioner at Annexure - A [age 13. He was serving as driver at Junagadh Depot-1. Report was submitted against the petitioner and on that basis, charge sheet was served upon the petitioner on 21st October, 1982 to which no reply was submitted by the petitioner and then reporter was examined on 4th May, 1983 and thereafter, show cause notice was issued on 24th October, 1985 and thereafter, the petitioner was dismissed from service on 16th June, 1986. The competent authority has held the departmental inquiry against the petitioner in absence of the petitioner and thereafter, considering the reply of the petitioner, he has been dismissed from service. From the record of the dismissal order, it appears that the competent authority has not considered the past record of the petitioner while passing the impugned order of dismissal. Said order of dismissal was challenged by the workman before the labour court. Before the labour court, the statement of claim was filed by the workman concerned at Exh. 5 and the reply thereto was filed by the corporation at Exh. 7. The allegations were made against the workman that initially he was on leave for fifteen days with effect from 19th September, 1982 and leave report was submitted by the workman which was rejected by the corporation and thereafter he remained absent on the same date 19th September, 1982 for four days and ultimately he was dismissed from service. Before the labour court, vide list Exh. 8, documentary evidence was produced by the corporation which has been

exhibited from Exh. 9 to 20 and then, the petitioner was examined at Exh. 21 and his evidence was closed by filing purshis before the labour court. Thereafter, the corporation has also closed its evidence vide purshis Exh. 25 and thereafter, merits of the matter were examined by the labour court and the labour court has considered length of 20 years of past service as a driver and has come to the conclusion that the departmental inquiry initiated against the petitioner was legal and valid. Before the labour court, the petitioner workman has given deposition and it was pointed out that he has submitted leave report on the very same day 19th September, 1982 to which no reply was given by the authority concerned and the petitioner was also not permitted to proceed on leave and, therefore, the petitioner remained absent for a period of four days from 19.9.1982 to 22.9.1982. It is also necessary to note one important aspect of the matter that the leave for this period of four days has ultimately been sanctioned and salary for that period has also been granted in favour of the workman. That aspect was considered by the labour court. The petitioner has also alleged that the concerned authority is having some vindictive intention and therefore, he has been victimized. The labour court has in terms come to the conclusion that though the past record may be bad but on relevant time, punishments were imposed against the petitioner and the petitioner has undergone such punishments and ultimately the labour court has observed that the corporation has not led any oral evidence and the evidence produced by the petitioner has remained uncontroverted and unchallenged and, therefore, the labour court was of the view that the punishment of dismissal for remaining absent for a period of four days is unjust and, therefore, it exercised the powers under section 11A of the Act. However, in last para of the award in question, the labour court has, without any discussion whether the petitioner was remaining unemployed during the intervening period or not and whether the corporation has been able to prove gainful employment or not, straightway denied back wages for the intervening period by way of punishment for remaining absent for a period of four days without prior permission, without assigning any cogent reasons in support of such conclusion. Thus, from the award in question, it appears that the labour court has denied the back wages for the intervening period of about seven years by way of punishment for misconduct of his having remained absent for four days without permission. From the record, it appears that the leave report was submitted on the same day i.e. 19th September, 1982 and it also appears that no information was given whether the

said leave was sanctioned or not and it also appears that the leave was sanctioned and salary for the said period has already been paid to the petitioner. In view of these glaring facts, according to this Court's opinion, the labour court is not justified in denying full back wages for the entire period by way of punishment for the misconduct of remaining absent for a period of four days though report for the said period was submitted in advance but no information was given whether it was sanctioned or not and it is also clear that the salary for the said period has also been paid to the workman and yet by way of punishment, full back wages for the entire period has been denied by the labour court. Therefore, in view of these facts, according to my opinion, denial of full back wages for the period from 16th June, 1986 to 17th February, 1993 by way of punishment is harsh, unjustified, arbitrary and unwarranted in law and therefore,that part of the award in question is required to be modified by this court without disturbing the award of reinstatement in service with continuity.

In view of these factual aspects, this court had an occasion to consider the decision of this court in case of GSRTC versus Rama Samant reported in 2000 (2) GLH 231. Relevant para 6 and 7 of the said decision are reproduced as under:

"6. I am of the opinion that the case is covered by the decision of this Court reported in 1987 Lab I C pg. 685. In identical situation in the said decision for remaining absent for a period of two days, the punishment of dismissal was held to be harsh and unjustified and the workman was directed to be reinstated with full backwages In the said decision, punishment of stoppage of two annual increments was imposed upon the workman without future effect.

7. This Court has observed in above cited case in 1987 Lab IC 685 as under:

'4. Even though the Labour Court had come to the conclusion that dismissal from service is deprivation of bread and for such type of trivial misconduct, it was unreasonable and excessive, it imposed another excessive and unreasonable punishment. The Labour Court has rightly observed that the Corporation has not considered as to why lesser punishment should not be passed

against the workman. However, the Labour Court itself fell into an error in not considering the alternative lesser punishment. There is a total non application of mind on the part of the Labour Court in directing the respondent Corporation that refusal of 50 per cent back wages is sufficient punishment, without considering as to what that 50 % would amount to. The monthly wages of the workman are about Rs.1600/- including dearness allowance and other allowances. He was dismissed from service on 15th November, 1980 and was actually reinstated on 15.4.1984. Thus, he was out of service for more than 3 and 1/2 years. The total wages for this period would be running into a very large amount and even denial of 50 % of the backwages would run nito several thousands of rupees. The Labour Court has not at all applied its mind while observing that refusal of 50 % backwages is sufficient punishment. The Labour Court does not appear to have realised as to what the substituted punishment would really amount to. For such a trivial misconduct of absence of two days, the punishment should not have resulted into such a severe amount of fine of several thousands of rupees. The Labour Court has rightly observed that the Corporation has not considered as to what lesser punishment than dismissal should be given. The Labour Court also observed that the workman is an old servant of the Corporation and he should not be deprived of his bread for such an act of misconduct. However, the labour court has itself deprived the workman of his bread for a very long period and a very large amount disproportionate to the misconduct of the workman. '

'5. In the case of Sardarsingh Devisingh v. District SUperintendent of Police, Sabarkantha DIstrict, 1985 (2) 26 GUJ LR 1368, this Court had considered the questionof reasonableness and rationality of punishment in proportion to the misconduct. In para 6 of that

judgment, the learned Judge (Ahmadi, J.) has observed as under:

'When an authority is conferred with the power to inflict one of the several penalties such as caution or censure, reprimand, extra drill or duty, fine, stoppage of increments, reduction in rank, removalor dismissal, it is obvious that the authority must give a serious thought to the question of choice of penalty. The choice cannot be arbitrary but must depend on the nature of misconduct established in a given case. Just as a road roller cannot be brought to crush a fly, so also the extreme penalty of dismissal cannot be inflicted for misconduct which is not equally grave. The consequences of removal or dismissal from service are severe, some time the entire family is ruined because another job or work may not be easy to find and, therefore, it is all the more necessary that the punishment of removal/dismissal should be invoked sparingly and in cases which can be described as gross, such as, receiving or defalcation of public funds, behaviour which is morally reprehensible, gross abuse or misuse of authority etc. However, if a policeman remains absent without leave, it certainly has an adverse effect on disciplined force which can be remedied by imposing a lighter penalty such as withholding of increments or the like.'

In the present case, we find that the punishment of refusal of 50 per cent back wages which actually runs into several thousands of rupees is disproportionate to the misconduct of the workman, which is very minor and which could not have attracted any major penalty. No reasonable persons could have imposed a penalty or fine of several thousands of rupees or dismissal for remaining absent for two days and negligence. In the case of Jitendra Singh Rathor (1984 Lab IC 554) (supra) the Tribunal had directed reinstatement of the workman with half

back wages and the employer had approached the High COurt under Article 227. T he High Court vacated the order of reinstatement holding that the ends of justice would be served by directing payment of compensationquantified at Rs.15,000/-. This modification of the High COurt was assailed before the Supreme Court at the instance of the workman.In that case, the Supreme Court observed that the workman is ordinarily entitled to full back wages unless for any particular reason the whole or a part of it is asked to be withheld. In the present case, there is no particular reason shown to withhold 50% of the back wages whichrun into several thousands of rupees as punishment for a very minor misconduct. Such a minor misconduct could be punished only with a minor penalty like withholding of one or two increments without cumulative effect.The cumulative effect is also many a time not given proper consideration. Cumulative effect has the effect over the entire service carrier of the workman and there is a permanent loss, and at the end of service the cumulative loss would run into a very large figure and it would also affect the pensionary benefits. The punishment of stoppage of increment with cumulative effect is to be imposed after careful consideration and application of mind to be the resultant consequence.

'6. In view of the misconduct, here of misconduct from duty for two days and negligence, the maximum penalty that could have been imposed by any reasonable employer could not have been more than stoppage of two increments without cumulative effect, especially in view of the fact that the past recorsd of the workman was not bad and he had good service record of 9 years and also a long service to go. '

'7. In view of the aforesaid discussion, we quash and set aside the award of the Labour Court in so far as the Labour COurt has refused 50% back

> wages as sufficient punishment. We, therefore, hold that the workman is entitled to reinstatement with continuity of service with full back wages but he is required to be punished by imposing on him penalty of stoppage of two increments without cumulative effect.' "

This Court has also considered the decision of this Court in case of Vijay M. Jasani v. GSRTC reported in 1987 Lab. IC 685 wherein the workman concerned was alleged to have remained absent for two days. In the said case, the labour court has granted 50 per cent back wages while imposing punishment and the said award of the labour Court was challenged before this court by the workman for denying 50 per cent backwages for interim period and the petition was allowed by this court. Therefore, considering the observations made by this court in aforesaid decisions and the other decisions of the apex court referred to in the said decision, according to my opinion, the labour court ought to have awarded some back wages to the workman. The respondent corporation is a public body and, therefore, it would not be just and proper to burden the corporation by awarding full back wages. The petitioner is a driver and taking into considering his post, it would be just and proper to award back wages at the rate of 50 per cent for the intervening period. To that extent, the award in question is required to be modified without disturbing the award of reinstatement with continuity of service.

Accordingly, this petition is partly allowed. The directions issued by the labour court concerned in Reference No. 165 of 1987 dated 17th December, 1993 in respect of the denial of total back wages for the intervening period are hereby quashed and set aside and it is directed to the respondent corporation to pay 50 per cent of the back wages to the petitioner for the intervening period from the date of dismissal till the date of award made by the labour court with all consequential benefits. Rule is accordingly made absolute in terms indicated hereinabove with no order as to costs.

5.4.2002. (H.K. Rathod,J.)

Vyas